

### **REMARKS**

In the Office Action, the Examiner required restriction under 35 U.S.C. 121 in the present application to one of the following inventions:

Group I – Claims 1-25, 29-30, 43-49, 50-53, drawn to electrochemical cells, classified in class 429, subclass 44, or 234 or 245;

Group II – Claims 26-28 and 54, drawn to methods for inhibiting degradation of an electrically conductive contact element by including a layer (coating), classified in class 29/623.5 or 427/404; and

Group III – Claims 31-42 drawn to a product having a galvanic coating, classified in class 427, subclass 58 or 115.

Accordingly, Applicants hereby provisionally elect Group I, but traverse the restriction requirement with respect to Group III of Claims 31-42. In light of the remarks below, Applicants respectfully requests the Examiner to reconsider and withdraw the restriction requirement for Group III, Claims 31-42. Applicants have withdrawn Claims 26-28 and 54 and further make this election without prejudice to filing one or more divisional applications directed to the non-elected groups. Applicants will cancel the claims directed to the non-elected group when an indication of allowance of the elected group is received.

Applicants respectfully submit that restriction of Group I and Group III is improper because the inventions are not distinct. Since the claims of Group III depend from the claims of Group I, the claims of Group III are not distinct inventions. Claim 1 describes an electrochemical cell with an electrically conductive contact element “having an electrically conductive *coating*”. Claim 29 depends from Claim 1 and describes further

limitations of the electrochemical cell where the “electrically conductive contact element comprises a bipolar plate including a sheet metal product having said *coating* which is a corrosion-resistant including a metal oxide composition having a *treatment* which ensures conductivity.” Claims 31-42 of Group III depend directly from Claim 29 and indirectly from Claim 1 to further provide limitations for the coating and treatments described in Claims 1 and 29 from which they depend. Therefore the claims of Group III are not distinct inventions. If inventions are not distinct, restriction is never proper. See, MPEP §806.05. Claims 31, 32 and 36-41 have been amended to recite “The cell of Claim 29”, whereas Claims 33-35 have been amended to recite “The cell of Claim 32” to make it clear that the claims of Group III are not directed to distinct inventions but rather recite further limitations of the same invention.

The Examiner also requested an election between Species I, directed to a fuel cell, or Species II, directed to an electrolytic cell. Claim 23 has been amended to delete the reference to an electrolytic cell. In view of the preceding election and amendment, the further election requirement of Species is moot. Both Group I claims, provisionally elected, and Group III claims, traversed, are drawn to a more broad group of electrochemical cells, and do not distinguish between fuel cells and electrolytic cells.

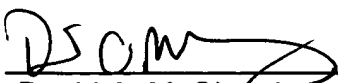
The Examiner has imposed a further election requirement between Sub-species 1 directed to the design illustrated in Figure 5, Sub-species 2 directed to the design illustrated in Figure 6 and Sub-species 3 directed to the design illustrated in Figure 7. In making the election requirement, the Examiner states that “the species are independent or distinct because they all represent mutually exclusive embodiments that do not overlap in scope.” Applicants respectfully disagree with the Examiner’s position that Sub-species 1-3 are mutually exclusive embodiments and therefore traverse this

election requirement. Applicant provisionally elects Sub-species 2 as illustrated in Figure 6. Applicants submit that Claims 1-22 read on the embodiment illustrated in Figure 6, and further submit that Claims 1-5 are generic to all of the embodiments illustrated and disclosed in the present application. It is clear from the patent drawings that Figure 6 represents an embodiment in which the coating (94) may be formed on either external surface or the internal openings illustrated therein, whereas Figures 5 and 7 illustrate an embodiment where one or both exterior surfaces are coated. The embodiment illustrated in Figure 6 supports claims directed to a coating formed on any one of at least the first and second surfaces as well as the internal openings or combinations thereof.

In view of the foregoing elections, amendments and remarks, it is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for further consideration by the Examiner. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

Dated: July 20, 2006

By:   
David A. McClaghry  
Reg. No. 37,885

HARNESS, DICKEY & PIERCE, P.L.C.  
P.O. Box 828  
Bloomfield Hills, Michigan 48303  
(248) 641-1600

DAM/ERB/pal